

Federal Reserve System

section may appeal the disapproval to the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(c) *Informal hearing.* (1) An individual or regulated institution whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the regulated institution within 60 days of the conclusion of any informal hearing ordered by the Board, unless the requesting party agrees to a later date.

§ 238.76 Waiting period.

(a) *At expiration of period.* A proposed director or senior executive officer may begin service at the end of the 30-day period and any extension as provided under § 238.74 unless the Board or Reserve Bank notifies you that it has disapproved the notice before the end of the period.

(b) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period and any extension as provided under section 238.74 of this

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section, if the Board or the Reserve Bank notifies in writing the savings and loan holding company or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the notice.

§ 238.77 Waiver of prior notice requirement.

(a) *Waiver request.* An individual may serve as a director or senior executive officer before filing a notice under this subpart if the Board or Reserve Bank finds that:

(1) Delay would threaten the safety or soundness of the savings and loan holding company;

(2) Delay would not be in the public interest; or

(3) Other extraordinary circumstances exist that justify waiver of prior notice.

(b) *Automatic waiver.* An individual may serve as a director upon election to the board of directors before filing a notice under this subpart, if the individual:

(1) Is not proposed by the management of the savings and loan holding company;

(2) Is elected as a new member of the board of directors at a meeting of the savings and loan holding company; and

(3) Provides to the appropriate Reserve Bank all the information required in § 238.74 within two (2) business days after the individual's election.

(c) *Subsequent Board or Reserve Bank action.* The Board or Reserve Bank may disapprove a notice within 30 days after the Board or Reserve Bank issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

Subpart I—Prohibited Service at Savings and Loan Holding Companies

§ 238.81 Purpose.

This subpart implements section 19(e)(1) of the Federal Deposit Insurance Act (FDIA), which prohibits persons who have been convicted of certain criminal offenses or who have

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agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with a savings and loan holding company. This part also implements section 19(e)(2) of the FDIA, which permits the Board to provide exemptions, by regulation or order, from the application of the prohibition. This subpart provides an exemption for savings and loan holding company employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a savings and loan holding company as of October 13, 2006. The subpart also describes procedures for applying to the Board for an exemption.

§ 238.82 Definitions.

The following definitions apply to this subpart:

(a) *Institution-affiliated party* is defined at 12 U.S.C. 1813(u), except that the phrase “savings and loan holding company” is substituted for “insured depository institution” each place that it appears in that definition.

(b) *Enforcement Counsel* means any individual who files a notice of appearance to serve as counsel on behalf of the Board in the proceeding.

(c) *Person* means an individual and does not include a corporation, firm or other business entity.

(d) *Savings and loan holding company* is defined at § 238.2(m), but excludes a subsidiary of a savings and loan holding company that is not itself a savings and loan holding company.

§ 238.83 Prohibited actions.

(a) *Person*. If a person was convicted of a criminal offense described in § 238.84, or agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense, he or she may not:

(1) Become, or continue as, an institution-affiliated party with respect to any savings and loan holding company.

(2) Own or control, directly or indirectly, any savings and loan holding company. A person will own or control a savings and loan holding company if

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he or she owns or controls that company under subpart D of this part.

(3) Otherwise participate, directly or indirectly, in the conduct of the affairs of any savings and loan holding company.

(b) *Savings and loan holding company*. A savings and loan holding company may not permit any person described in paragraph (a) of this section to engage in any conduct or to continue any relationship prohibited under that paragraph.

§ 238.84 Covered convictions or agreements to enter into pre-trial diversions or similar programs.

(a) *Covered convictions and agreements*. Except as described in § 238.85, this subpart covers:

(1) Any conviction of a criminal offense involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.

(2) Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon an agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.

(b) *Dishonesty or breach of trust*. A determination whether a criminal offense involves dishonesty or breach of trust is based on the statutory elements of the crime.

(1) “Dishonesty” means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving a want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.